IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19183 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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JAYAGAURI TRIBHOVANDAS GOHEL - Petitioner(s)
Versus
GHANDHYAMBHAI PRABHUDAS PATEL & 3 - Respondent(s)

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Appearance :
MR PRABHAKAR UPADYAY for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 4.
MRS SUMAN KHARE for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 21/11/2006

ORAL JUDGMENT

1. The petitioner – original applicant has filed this petition under Article-227 of the Constitution of India challenging the order passed by the learned Civil Judge (J.D.) Dakore below an application seeking direction to serve notice on the respondents in Probate Application No.6 of 2005.

2. This Court has issued rule on 20.9.2005. While issuing rule this Court has clarified that the respondents Nos.1 to 3, if so desire, may appear through their Power of Attorney Holder. This Court has directed the registry to issue notice to the respondents Nos.1 to 3 through Speed Post at the cost of the petitioner. The Court has observed that the respondents Nos.1 to 3 were not objecting

to the proceedings initiated under the Indian Succession Act. However, by way of abundant caution, they are required to be served notice of rule issued by this Court.

3. Pursuant to this order registry has issued notice of rule to the respondents Nos.1 to 3 through Speed Post. All the 3 respondents have sent their reply on 8.10.2005. In reply, they have stated that their father expired on 3.8.2003 and at that time all the legal heirs of the deceased father, including sisters arrived in India and remained present in funeral. They have further stated that they were all aware about the will of their father dated 30.11.2002 which was executed in favour of Rajesh T. Gohel and five sisters and for that they did not have any objection. They have further confirmed that the power of attorney was executed by them and their sisters in favour of Rajesh T. Gohel – respondent No.4 on

12.8.2003 when they were in India and by virtue of the said power of attorney, the said Rajesh T. Gohel have right to do each and everything on behalf of them and there was no doubt about this will and power of attorney. They have, therefore, requested the Court to pass necessary order in the said petition.

4. On the basis of the will of Shri Prabhudas N. Patel as well as general power of attorney executed by all legal heirs including the respondents Nos.1 to 3 in favour of the respondent No.4 and in view of the supporting reply filed by the respondents Nos.1 to 3 which are on record of this petition, Mr.Upadhyay has submitted that the learned trial Judge may be directed to issue notice on behalf of respondents Nos.1 to 3 on respondent No.4. He has further submitted that in view of this documentary evidence, order passed by the learned trial Judge is

not just and proper. There may not be any presumption contrary to the documentary evidence on record. The learned trial Judge is not justified to observe that the respondent Nos.1 to 3 were residing at USA and it should be executed in USA. The power of attorney was not executed in USA. It was executed in India at the time of death of the deceased when all were present in India. There is no valid reason for rejecting the application moved by the petitioner – original applicant.

5. Mrs.Suman Khare, learned advocate appearing on behalf of the respondent No.4 has submitted that she has no objection if the relief prayed for in the present petition is granted.

6. After having heard the learned advocates appearing on behalf of the respective parties and after having gone through the contents of

the will, power of attorney and application moved by the present petitioner before the trial Court and the impugned order passed thereon as well as communication received from the USA pursuant to the notices issued by this Court on respondent Nos.1 to 3, this Court is of the view that if the notice issued on respondent Nos.1 to 3 is served on the power of attorney holder i.e respondent No.4 the end of justice would better be served.

7. On going through the application seeking probate the Court has found that the present petitioner – original plaintiff has asked for succession certificate / probate certificate in respect of the property mentioned in para-7(A) of the will. The said para-7(A) states that the said property was to be given to the present petitioner alongwith the respondent No.4 as well as the daughters of the deceased, namely, (1) Manjuben Prabhudas

Patel (2) Hanshaben Prabhudas Patel (3) Renukaben Prabhudas Patel (4) Arunaben Prabhudas Patel and (5) Rashmiben Prabhudas Patel. The daughters of the deceased were not joined as parties to the application seeking succession certificate or probate. The applicant – petitioner shall move necessary application to this effect before the trial Court in the pending application and after joining them necessary notices be issued on them or their power of attorney holder.

8. Subject to the aforesaid direction and observation this petition is accordingly allowed. Rule is made absolute to the aforesaid extent without any order as to costs.

(K. A. PUJ, J.)

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